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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 4036

13 **VICENTE CASTANEDA**
220 S. Gage Ave
Los Angeles, CA 90063

ACCUSATION

14 Pharmacy Technician Registration No. TCH
72999

15 Respondent.
16

17
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

22 2. On or about November 9, 2006, the Board of Pharmacy ("Board") issued Pharmacy
23 Technician Registration No. TCH 72999 to Vicente Castaneda ("Respondent"). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on March 31, 2014, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board under the authority of the following
3 laws. All section references are to the Business and Professions Code ("Code") unless otherwise
4 indicated.

5 **STATUTORY PROVISIONS**

6 4. Section 118, subdivision (b), provides, in pertinent part, that the suspension,
7 expiration, surrender, or cancellation of a license shall not deprive the Board jurisdiction to
8 proceed with a disciplinary action during the period within which the license may be renewed,
9 restored, reissued or reinstated.

10 5. Section 490 states, in pertinent part:

11 "(a) In addition to any other action that a board is permitted to take against a licensee, a
12 board may suspend or revoke a license on the ground that the licensee has been convicted of a
13 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
14 or profession for which the license was issued.

15 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
16 discipline a licensee for conviction of a crime that is independent of the authority granted under
17 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
18 of the business or profession for which the licensee's license was issued.

19 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
20 conviction following a plea of nolo contendere. Any action that a board is permitted to take
21 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
22 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
23 made suspending the imposition of sentence, irrespective of a subsequent order under the
24 provisions of Section 1203.4 of the Penal Code."

25 6. Section 4300 states, in pertinent part, that every license issued by the Board is subject
26 to discipline, including suspension or revocation.

27 7. Section 4301 of the Code states:
28

1 “The board shall take action against any holder of a license who is guilty of unprofessional
2 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
3 Unprofessional conduct shall include, but is not limited to, any of the following:

4

5 “(j) The violation of any of the statutes of this state, or any other state, or of the United
6 States regulating controlled substances and dangerous drugs.

7

8 “(l) The conviction of a crime substantially related to the qualifications, functions, and
9 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
10 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
11 substances or of a violation of the statutes of this state regulating controlled substances or
12 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
13 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
14 The board may inquire into the circumstances surrounding the commission of the crime, in order
15 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
16 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
17 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
18 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
19 of this provision. The board may take action when the time for appeal has elapsed, or the
20 judgment of conviction has been affirmed on appeal or when an order granting probation is made
21 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
22 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
23 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
24 indictment...”

25 REGULATORY PROVISIONS

26 8. California Code of Regulations, title 16, section 1770, states, in pertinent part:

27 “For the purpose of denial, suspension, or revocation of a personal or facility license
28 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a

1 crime or act shall be considered substantially related to the qualifications, functions or duties of a
2 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
3 licensee or registrant to perform the functions authorized by his license or registration in a manner
4 consistent with the public health, safety, or welfare.”

5 **COST RECOVERY**

6 9. Section 125.3 states, in pertinent part, that the Board may request the administrative
7 law judge to direct a licensee found to have committed a violation or violations of the licensing
8 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
9 case.

10 **CONTROLLED SUBSTANCE-DANGEROUS DRUG**

11 10. Methamphetamine, a central nervous stimulant, is a Schedule II controlled substance
12 as designated by Health and Safety Code section 11055, subdivision (d)(2), and is categorized as
13 a dangerous drug pursuant to Business and Professions Code section 4022.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Conviction of a Substantially-Related Crime)**

16 11. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
17 490, in conjunction with California Code of Regulations, title 16, section 1770, in that
18 Respondent has been convicted of a crime substantially related to the qualifications, functions or
19 duties of a pharmacy technician as follows:

20 a. On or about January 12, 2011, in the criminal matter entitled *The People of the State*
21 *of California v. Vicente Castaneda* (Super. Ct. Los Angeles County, 2010, No. BA376000),
22 Respondent was convicted of one felony count of violating Health and Safety Code section
23 11379, subdivision (a), transportation of a controlled substance. Respondent was sentenced to
24 serve 120 days in jail, placed on probation for three years, and fined. The circumstances
25 surrounding the convictions are that on or about August 26, 2010, a deputy with the Los Angeles
26 Sheriff's Department performed a routine traffic stop on a vehicle that was missing a front license
27 plate. The driver of the vehicle was later identified as Respondent. Upon approaching the
28 vehicle, the deputy observed the passenger toss a zip-lock bag containing a white substance to the

1 passenger floor board. During further investigation, the deputy recovered the zip-lock bag which
2 contained methamphetamine. During a consented search of Respondent's person, the deputy
3 recovered two plastic baggies containing a white crystal like substance, ninety-six plastic baggies
4 from Respondent's right front pocket, and a digital scale from his left front pocket.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Violating Drug Statutes)**

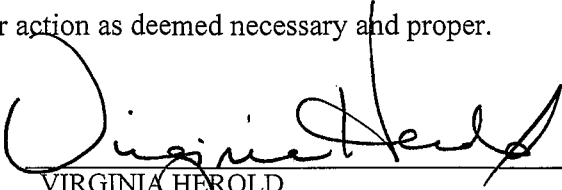
7 12. Respondent is subject to disciplinary action under section 4301, subdivision (j), for
8 violating Health and Safety Code section 11379, in that Respondent transported
9 methamphetamine, a controlled substance, without a valid prescription. Complainant refers to,
10 and this reference incorporates, the allegations as set forth in paragraph 11, subparagraph (a),
11 inclusive, above, as though set forth fully.

12 **PRAAYER**

13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Board issue a decision:

- 15 1. Revoking or suspending Pharmacy Technician Registration No. TCH 72999, issued
16 to Vicente Castaneda;
17 2. Ordering Vicente Castaneda to pay the Board the reasonable costs of the investigation
18 and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
19 3. Taking such other and further action as deemed necessary and proper.

20
21 DATED: 6/15/12


22 VIRGINIA HEROLD
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant
28

LA2011600561